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OCT 21 2003

In re Application of	:	OFFICE OF PETITIONS
Casimir R. Kiczek et al	:	
Application No. 10/613,890	:	DECISION ON PETITION
Filed: July 3, 2003	:	
Attorney Docket No. 02-11	:	

This is a substitute decision on the petition under 37 CFR 1.137(b), filed September 29, 2003, to revive the above-identified application. The decision mailed October 9, 2003 is vacated for the reason stated below.

The petition is dismissed as moot.

The previous decision granting the petition to revive under 37 CFR 1.137(b) was mailed in error. In this regard, Office computer database records for this file indicate that a Notice to File Missing Parts of Nonprovisional Application requiring the submission of an executed oath or declaration and surcharge was mailed October 1, 2003, setting a period for reply of two months. There is no other indication in the file record of a Notice having been mailed previous to the Notice of October 1, 2003. Therefore, since the period for reply to the Notice of October 1, 2003 has not yet expired, this application is not in fact abandoned.

An executed "Declaration and Power of Attorney," as well as the required surcharge, was received prior to the mailing of the Notice of October 1, 2003. Therefore, the Notice of October 1, 2003 is vacated.

The terminal disclaimer submitted with the petition to revive is unnecessary and will not be processed. Also, petitioner should note that the filing of a terminal disclaimer is unnecessary as a condition for revival in applications filed on or after June 8, 1995. Note 37 CFR 1.137(d). Accordingly, the \$110 fee submitted for the terminal disclaimer will be refunded to petitioner's deposit account.

Additionally, since the petition to revive is likewise unnecessary, the \$1,300 fee submitted therefor is refundable. However, since there is no indication that the \$130 surcharge fee was received, \$130 of the \$1,300 fee submitted for the instant petition will be applied towards the surcharge. The \$1,170 balance will be credited to petitioner's deposit account.

The USPTO wishes to apologize for any inconvenience caused petitioner in this matter.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

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for Patent Examination Policy